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| 10/556,558                    | 11/14/2005  | Gianni Perdomi       | MI 6109 (US)        | 8649             |
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| Basell USA Inc.               |             |                      | KRYLOVA, IRINA      |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/556,558             | PERDOMI, GIANNI     |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Irina Krylova          | 1796                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 29 June 2009.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 7-14 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 7-14 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 06/29/09.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed by Applicant on June 29, 2009 has been fully considered.

2. The amendment to claims 7-9 and addition of new claims 13 and 14 are acknowledged. Specifically, claim 7 has been amended to exclude a limitation of the ester being vinyl ester of C2-C18 carboxylic acid, just leaving the only possible ester being ethylenically unsaturated organic monomer esters of unsaturated C3-C20 monocarboxylic acids and C1 to C24 monovalent aliphatic or alicyclic alcohols. Since the previous rejections were based on limitation of the ester being vinyl ester of C2-C18 carboxylic acid, now excluded, therefore, the all previous rejections under 35 USC 102/103 and 35 USC 103(a) are withdrawn. The new grounds of rejections are necessitated by Applicant's amendment filed on June 29, 2009, are set forth below.

Therefore, the following action is properly made final.

3. All previous rejections under 35 USC 112 have been withdrawn in light of Applicant's amendment filed on June 29, 2009.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**4. Claims 7-11** are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 7 of copending Application No.10/557,297.

The nonstatutory obviousness-type double patenting rejection is adequately set forth on pages 2-4 of an Office Action mailed on March 25, 2009 and is incorporated here by reference.

The Terminal Disclaimer filed by Applicant on June 29, 2009 is acknowledged. However, the filed Terminal Disclaimer has been disapproved due to the following reason: Attorney does not have Power of Attorney. Therefore, the obvious double patenting rejection of claims 7-11 as being unpatentable over claims 1-3 and 7 of copending application 10/557,297 is maintained.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 7-8** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Glick et al** (US 2003/0044551).

6. **Glick et al** discloses a film structure comprising a layer comprising a blend (as to instant claim 7, cited in Abstract):

- 1) 40-95%wt of a copolymer of an ethylene with up to 40%wt of an alkyl acrylate, specifically 1-30%wt of alkyl (meth)acrylate ([0030]), particularly butyl acrylate (as to instant claim 8, cited in [0030]);
- 2) 5-60%wt of a linear low density metallocene polyethylene having a density 0.917 g/cc (see [0034]-[0035]).

As to instant claim 12, the film may be used packaging ([0039]).

7. All the ranges of components in the film of **Glick et al** are overlapping with the ranges of components of the film claimed in the instant invention. It is well settled that where the prior art describes the components of a claimed compound or compositions in concentrations within or overlapping the claimed concentrations a *prima facie* case of

obviousness is established. See *In re Harris*, 409 F.3d 1339, 1343, 74 USPQ2d 1951, 1953 (Fed. Cir 2005); *In re Peterson*, 315 F.3d 1325, 1329, 65 USPQ 2d 1379, 1382 (Fed. Cir. 1997); *In re Woodruff*, 919 F.2d 1575, 1578 16 USPQ2d 1934, 1936-37 (CCPA 1990); *In re Malagari*, 499 F.2d 1297, 1303, 182 USPQ 549, 553 (CCPA 1974).

8. Though **Glick et al** does not specify some of the properties of the components including density of the ethylene-acrylate copolymer and the ratio between a MD Elmendorf tear resistance and a TD Elmendorf tear resistance of the film, nevertheless, since the ranges of the components of the film of **Glick et al** and the corresponding components of the film claimed in the instant invention are overlapping, and the specific properties of the composition depend on the relative proportion of each component in the composition, therefore, the properties of the film of **Glick et al** will intrinsically be within the same ranges as corresponding properties claimed in the instant invention.

**9. Claims 9-12** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Glick et al** (US 2003/0044551), as applied to claim 7 above, and further in view of **Govoni et al** (WO 95/20009).

10. The discussion with respect to **Glick et al** (US 2003/0044551) as set forth in paragraphs 6-8 above is incorporated here by reference.

11. **Glick et al** fails to teach the use of a polymer blend comprising:

- a) 80-100 pbw of a random interpolymer of ethylene with up to 20%mol of at least one  $\text{CH}_2=\text{CHR}$  alpha-olefin, where R is a hydrocarbon having 1-10 carbon atoms, having a density of 0.88-0.945 g/ml;
- b) 5-30 pbw of a random interpolymer of propylene with at least one  $\text{CH}_2=\text{CHR}$  alpha-olefin, wherein R is a hydrocarbon having 2-10 carbon atoms; the interpolymer comprising 60-98%wr of propylene; 2-40%wt of alpha-olefin; 0-10%wt ethylene units; wherein the xylene-insoluble fraction at room temperature greater than 70%.

**12. Govoni et al** discloses a polymeric composition for making films comprising :

- 1) 75-95%wt of a copolymer of ethylene with up to 20%mole an alpha-olefin  $\text{CH}_2=\text{CHR}$ , where R comprises an alkyl radical having 1-10 carbon atoms, having a density 0.88-0.945 g/cc (page 6, lines 3-6);
- 2) 5-25%wt of a copolymer of propylene with ethylene and at least one alpha-olefin  $\text{CH}_2=\text{CHR}'$ , wherein R' is an alkyl radical having 2-10 carbon atoms, wherein the copolymer comprises:

- 80-98%wt propylene;
- 1-10%wt ethylene;
- 1-10%wt alpha-olefin, particularly butene (page 5, lines 13-15; page 7, lines 12-15);

And the copolymer is characterized by an insolubility in xylene of higher than 70% (page 4, lines 12-22).

13. Since **Govoni et al** discloses a similar ethylene-based copolymer blend including similar densities as the ethylene-alpha-olefin copolymer of **Glick et al**, but having improved processability and improved mechanical properties (see page 1, lines 4-7 in **Govoni et al**), therefore, it would have been obvious to a one skilled in the art at the time of the invention was made to include the ethylene-based copolymer blend of **Govoni et al** in the composition of **Glick et al** to produce films having improved processability and improved mechanical properties (see page 1, lines 4-7 in **Govoni et al**).

14. Since the composition of **Glick et al** in view of **Govoni et al** is essentially the same as claimed in the instant invention, therefore, the ratio between MD tear resistance and TD tear resistance will obviously fall within the same ranges as claimed in the instant invention.

15. As to instant claim 12, though the use of the composition for making the elastic tapes is not specifically recited, since the composition of **Glick et al** in view of **Govoni et al** comprises improved physical properties, including improved tear resistance (see page 9 in **Govoni et al**), and both compositions of **Glick et al** and **Govoni et al** are used for making films, therefore, it would have been obvious to a one skilled in the art at the time of the invention was made, to produce multilayered extruded films to be used as tapes.

**16. Claims 7-9, 12-14** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Patrick et al** (US 5,332,616).

**17. Patrick et al** discloses a film for use in multilayer film packaging comprising:

- 1) 70% of ethylene-butyl acrylate copolymer (col. 3, lines 25-26) having 0.8-30% of butyl acrylate units (as to instant claim 8, cited in col. 2, lines 34-39);
- 2) 30% of very low density polyethylene comprising ethylene-alpha olefin copolymer having a density of 0.912-0.915 g/cc (Col. 2, lines 17-20).

18. All the ranges of components in the film of **Patrick et al** are overlapping with the ranges of components of the film claimed in the instant invention. It is well settled that where the prior art describes the components of a claimed compound or compositions in concentrations within or overlapping the claimed concentrations a *prima facie* case of obviousness is established. See *In re Harris*, 409 F.3d 1339, 1343, 74 USPQ2d 1951, 1953 (Fed. Cir 2005); *In re Peterson*, 315 F.3d 1325, 1329, 65 USPQ 2d 1379, 1382 (Fed. Cir. 1997); *In re Woodruff*, 919 F.2d 1575, 1578 16 USPQ2d 1934, 1936-37 (CCPA 1990); *In re Malagari*, 499 F.2d 1297, 1303, 182 USPQ 549, 553 (CCPA 1974).

19. Though **Patrick et al** does not specify some of the properties of the components including density of the ethylene-butyl acrylate copolymer and the ratio between a MD Elmendorf tear resistance and a TD Elmendorf tear resistance of the film, nevertheless, since the ranges of the components of the film of **Patrick et al** and the corresponding

components of the film claimed in the instant invention are overlapping, and the specific properties of the composition depend on the relative proportion of each component in the composition, therefore, the properties of the film of **Patrick et al** will intrinsically be within the same ranges as corresponding properties claimed in the instant invention. In addition, since the physical properties of the film, including tear resistance, depend on the relative proportion of the components in the composition, therefore, such limitation as relative proportion of the components in the composition becomes a result effective variable, therefore, it would have been obvious to one skilled in the art at the time of the invention was made, to make variations in the relative proportion of the components in the film of **Patrick et al** to obtain the desired combination of physical properties of the film. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980) (MPEP 2144.05 II).

**20. Claims 7-9, 12-14** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Patrick et al** (US 5,332,616) in view of **Garland et al** (US 4,842,952).

21. The discussion with respect to **Patrick et al** (US 5,332,616) set forth in paragraphs 17-19 above, is incorporated here by reference.

**22. Patrick et al** fails to teach the ethylene-butyl acrylate copolymer having a density of 0.920-0.935 g/cc and low density polyethylene being linear.

**23.** **Garland et al** discloses film comprising a blend of:

- 1) ethylene-butyl acrylate copolymer having 2-6%wt of butyl acrylate units and further having a density of 0.921-0.923 g/cc (col. 4, lines 50-57);
- 2) linear low density polyethylene having a density of 0.905-0.915 g/cc (col. 4, lines 43-50), wherein the blend comprises improved adhesion to other films (col. 3, lines 5-10, 33-35).

**24.** Since

- 1) **Patrick et al** discloses a multilayer film for packaging comprising a blend of A) 70% of ethylene-butyl acrylate copolymer having 0.8-30% of butyl acrylate units and B) 30% of very low density polyethylene comprising ethylene-alpha olefin copolymer having a density of 0.912-0.915 g/cc, but fails to teach the ethylene-butyl acrylate copolymer having a density of 0.920-0.935 g/cc and low density polyethylene being linear;
- 2) **Garland et al** discloses film comprising a blend of A) ethylene-butyl acrylate copolymer having 2-6%wt of butyl acrylate units and further having a density of 0.921-0.923 g/cc; and B) linear low density polyethylene having a density of 0.905-0.915 g/cc, wherein the blend comprises improved adhesion to other films for use in multilayer structures; therefore, it would have been obvious to a one of ordinary skill in the art at the time of the invention was made to use the blend of ethylene-butyl acrylate with LLDPE of **Garland et al** as one of the layers in the multilayer film packaging of **Patrick et al** to

provide a layer having improved adhesion to other layers in the multilayer film packaging of **Patrick et al.**

Since the film of **Patrick et al** in view of **Garland et al** is identical to the film claimed in the instant invention, therefore, the properties of the film of **Patrick et al** in view of **Garland et al**, including the ratio between MD Elmendorf tear resistance and TD Elmendorf tear resistance, will intrinsically be within the same ranges as claimed in the instant invention.

**25. Claims 10-12** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Patrick et al** (US 5,332,616) in view of **Garland et al** (US 4,842,952), as applied to claim 7 above, and further in view of **Govoni et al** (WO 95/20009).

26. The discussion with respect to **Patrick et al** (US 5,332,616) in view of **Garland et al** (US 4,842,952), set forth in paragraphs 21-24 above, is incorporated here by reference.

27. **Patrick et al** in view of **Garland et al** fail to teach the use of a polymer blend comprising:

a) 80-100 pbw of a random interpolymer of ethylene with up to 20%mol of at least one  $\text{CH}_2=\text{CHR}$  alpha-olefin, where R is a hydrocarbon having 1-10 carbon atoms, having a density of 0.88-0.945 g/ml;

b) 5-30 pbw of a random interpolymer of propylene with at least one  $\text{CH}_2=\text{CHR}$  alpha-olefin, wherein R is a hydrocarbon having 2-10 carbon atoms; the interpolymer comprising 60-98%wr of propylene; 2-40%wt of alpha-olefin; 0-10%wt ethylene units; wherein the xylene-insoluble fraction at room temperature greater than 70%.

**28. Govoni et al** discloses a polymeric composition for making films comprising :

1) 75-95%wt of a copolymer of ethylene with up to 20%mole an alpha-olefin  $\text{CH}_2=\text{CHR}$ , where R comprises an alkyl radical having 1-10 carbon atoms, having a density 0.88-0.945 g/cc (page 6, lines 3-6);

2) 5-25%wt of a copolymer of propylene with ethylene and at least one alpha-olefin  $\text{CH}_2=\text{CHR}'$ , wherein R' is an alkyl radical having 2-10 carbon atoms, wherein the copolymer comprises:

- 80-98%wt propylene;
- 1-10%wt ethylene;
- 1-10%wt alpha-olefin, particularly butene (page 5, lines 13-15; page 7, lines 12-15);

And the copolymer is characterized by an insolubility in xylene of higher than 70% (page 4, lines 12-22).

29. Since **Govoni et al** discloses a similar ethylene-based copolymer blend including similar densities as the ethylene-alpha-olefin copolymer of **Patrick et al** in view of **Garland et al**, but having improved processability and improved mechanical properties (see page 1, lines 4-7 in **Govoni et al**), therefore, it would have been obvious to a one

skilled in the art at the time of the invention was made to include the ethylene-based copolymer blend of **Govoni et al** in the composition of **Patrick et al** in view of **Garland et al** to produce films having improved processability and improved mechanical properties (see page 1, lines 4-7 in **Govoni et al**).

30. Since the film of **Patrick et al** in view of **Garland et al** and **Govoni et al** is identical to a film claimed in the instant invention, therefore, the ratio between MD tear resistance and TD tear resistance will obviously fall within the same ranges as claimed in the instant invention.

29. As to instant claim 12, though the use of the composition for making the elastic tapes is not specifically recited, since the composition of **Patrick et al** in view of **Garland et al and Govoni et al** comprises improved physical properties, including improved tear resistance (see page 9 in **Govoni et al**), and both compositions of **Patrick et al** in view of **Garland et al** and **Govoni et al** are used for making films, therefore, it would have been obvious to a one skilled in the art at the time of the invention was made, to produce multilayered extruded films to be used as tapes.

31. **Claims 7-9, 12-14** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Moore et al** (US 5,567,038).

32. **Moore et al** discloses a film comprising a blend of:

- 1) 40-80%wt of linear low density polyethylene LLDPE comprising a linear copolymer of ethylene with minor amount of alpha olefin from 3 to 10 carbon atoms, preferably hexene or octane, having the density of 0.916-0.935 g/cc and melt index of 1-4 dg/min (col. 1, lines 35-45);
- 2) 20-60%wt of a copolymer of ethylene and methyl acrylate (EMA) containing 10%wt of methyl acrylate comonomer (col. 1, lines 21-23).

33. The ranges of the components of the film of **Moore et al** are overlapping with the ranges of the corresponding components of the film claimed in the instant invention. It is well settled that where the prior art describes the components of a claimed compound or compositions in concentrations within or overlapping the claimed concentrations a *prima facie* case of obviousness is established. See *In re Harris*, 409 F.3d 1339, 1343, 74 USPQ2d 1951, 1953 (Fed. Cir 2005); *In re Peterson*, 315 F.3d 1325, 1329, 65 USPQ 2d 1379, 1382 (Fed. Cir. 1997); *In re Woodruff*, 919 F.2d 1575, 1578 16 USPQ2d 1934, 1936-37 (CCPA 1990); *In re Malagari*, 499 F.2d 1297, 1303, 182 USPQ 549, 553 (CCPA 1974).

34. Though the content of methyl acrylate units (10%wt) in the EMA copolymer of Moore et al is not overlapping with the content of acrylate units claimed in the instant invention (8%wt), nevertheless, it is the examiner's position that the values are close enough that one of ordinary skill in the art would have expected the same properties. Case law holds that a *prima facie* case of obviousness exists where the claimed ranges

and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties. *Titanium Metals Corp. of America v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985).

**35. Claims 10-12** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Moore et al** (US 5,567,038) and further in view of **Govoni et al** (WO 95/20009).

36. The discussion with respect to **Moore et al** (US 5,567,038) set forth in paragraphs 32-34 above, is incorporated here by reference.

37. **Moore et al** fail to teach the use of a polymer blend comprising:

- a) 80-100 pbw of a random interpolymer of ethylene with up to 20%mol of at least one  $\text{CH}_2=\text{CHR}$  alpha-olefin, where R is a hydrocarbon having 1-10 carbon atoms, having a density of 0.88-0.945 g/ml;
- b) 5-30 pbw of a random interpolymer of propylene with at least one  $\text{CH}_2=\text{CHR}$  alpha-olefin, wherein R is a hydrocarbon having 2-10 carbon atoms; the interpolymer comprising 60-98%wr of propylene; 2-40%wt of alpha-olefin; 0-10%wt ethylene units; wherein the xylene-insoluble fraction at room temperature greater than 70%.

38. **Govoni et al** discloses a polymeric composition for making films comprising :

1) 75-95%wt of a copolymer of ethylene with up to 20% mole an alpha-olefin  $\text{CH}_2=\text{CHR}$ , where R comprises an alkyl radical having 1-10 carbon atoms, having a density 0.88-0.945 g/cc (page 6, lines 3-6);

2) 5-25%wt of a copolymer of propylene with ethylene and at least one alpha-olefin  $\text{CH}_2=\text{CHR}'$ , wherein R' is an alkyl radical having 2-10 carbon atoms, wherein the copolymer comprises:

-- 80-98%wt propylene;

-- 1-10%wt ethylene;

-- 1-10%wt alpha-olefin, particularly butene (page 5, lines 13-15; page 7, lines 12-15);

And the copolymer is characterized by an insolubility in xylene of higher than 70% (page 4, lines 12-22).

39. Since **Govoni et al** discloses a similar ethylene-based copolymer blend including similar densities as the ethylene-alpha-olefin copolymer of **Moore et al**, but having improved processability and improved mechanical properties (see page 1, lines 4-7 in **Govoni et al**), therefore, it would have been obvious to a one skilled in the art at the time of the invention was made to include the ethylene-based copolymer blend of **Govoni et al** in the composition of **Moore et al** to produce films having improved processability and improved mechanical properties (see page 1, lines 4-7 in **Govoni et al**).

40. Since the film of **Moore et al** in view of **Govoni et al** is identical to a film claimed in the instant invention, therefore, the ratio between MD tear resistance and TD tear resistance will obviously fall within the same ranges as claimed in the instant invention. As to instant claim 12, though the use of the composition for making the elastic tapes is not specifically recited, since the composition of **Moore et al** in view of **Govoni et al** comprises improved physical properties, including improved tear resistance (see page 9 in **Govoni et al**), and both compositions of **Moore et al** in view of **Govoni et al** are used for making films, therefore, it would have been obvious to a one skilled in the art at the time of the invention was made, to produce multilayered extruded films to be used as tapes.

### ***Response to Arguments***

41. Applicant's arguments filed on June 29, 2009 have been fully considered. It is noted that all previous rejections under 35 USC 102/103 and 35 USC 103(a) are withdrawn in light of the amendment filed by Applicant on June 29, 2009, thus rendering Applicant's arguments moot. The new grounds of rejections of claims 7-14 under 35 USC 103(a) are set forth in paragraphs 5-40 above.

Regarding the rejection of claims 7-8 under 35 U.S.C. 103(a) as being unpatentable over **Glick et al** (US 2003/0044551), Applicant argues that **Glick et al** requires the presence of acrylic acid unit in the copolymer of ethylene, whereas the acrylate unit is ranging between 0-40%, i.e. may not be present.

42. Examiner disagrees.

- 1) The instant claim 7 recites the ethylene polymer “comprising” recurring ester units; wherein the term “comprising” allows the presence of other comonomer units beside ethylene and acrylate units;
- 2) **Glick et al** recites the ethylene copolymer having 1-30%wt of alkyl (meth)acrylate units ([0030]), which range is overlapping with range of acrylate units claimed in the instant invention, thus establishing *a prima facie* obviousness.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irina Krylova whose telephone number is (571)270-7349. The examiner can normally be reached on Monday-Friday 7:30am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasudevan Jagannathan can be reached on (571)272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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